IV

1942 **File No.** O. Matadars/42

K

Subject: Legal **DEPARTMENT**

A **BRANCH**

(p 61E)

Opinions under

The Matadars Act, 1887

File No. O. Matadars/42

Std. Sectt Slip 21-B

496
A

C O N T E N T S.

Legal Department Vol- O.Matadars/42

Sr. No.	Compilation No.	Subject	Pages
1.	O No. 7837 dt. 26-9-42.	Matadars Act, 1887 Section 11- Whether any legal Action can be taken against the sole representative Matadar & others for not willing to ~~serve~~ serve as 'Patel' of avillage	1
2.	O.No. 9355 dt. 20-11-42	Whether in the event of anof by Matadar tendering his resignation failing to discharge his duties in sympathy with a political movement the Collr. can refuse to accept the resignation, remove him from office and for first the life interest of the officiator, if he is a representative Matadar ~~xxx~~ etc.	3-5

S.A.K.
30-4

3/5

K.S.R.
3/5

Office of the R.L.A.

There are 9 Matedars in the village Thamna in Anand Taluka and the right to enjoy the office of Revenue and Police Patel of the village exclusively vests in the family of Matadar Shankerbhai Chunthabhai who is 73 years old. His son Mr. Narshibhai Shankarbhai who was appointed as Deputy for the lifetime of his father, resigned his post and the sole representative Matedar wh o was given notice either to serve in person or to appoint a deputy has declined to do either. None of the other Matadars in the village is willing to serve as Patel and Government has decided to appoint an outsider as a Patel of that village. The question for consideration is whether any legal action can be taken against the sole representative Matadar and the other Matedars.

2. It is true that section 11 of the Matadars Act, 1887 lays down that every matadar shall be bound, when so required by the Collector, to perform the duties customarily discharged by matadars. But that section must be read along with the other provisionsof the Act. Section 22 provides that if a sole representative matadar declines to officiate in person, the collector shall appoint a deputy. The section further provides that a deputy shall ordinarily be a member of the matadar family. But if there is no such member fit and willing to officiate, any other person may be appointed. The Act thus envisages the possibility of matadars refusing to act or failing to nominate, and makes provision accordingly. There seems nothing in the language of the Act to suggest that refusal or failure is to be regarded as a misconduct. Section 31 says that any matadar who shall neglect or refuse to comply with any order by the Collector under section 11 may be punished by fine. But the Collector's order to the matadars to serve or nominate a deputy is not in the form of an order under section 11, but a notice under section 19 or 21 . It is clear from those provisions that there is no absolute duty upon the matadars to-refuse-No-action-can-therefore serve or appoint a deputy and they are at liberty to refuse. No. action can therefore be taken against them for such refusal.

Sd/- P.N.M.

20/ 9

Remembrancer of Legal Affairs.

S.A.K. 30-4

U.R. to R.D., No. 7837, dated the 26th September 1942.

Office of the R.L.A.

The question for R.L.A's consideration is whether in the event of an officiating Matadar tendering his resignation and failing to discharge his duties in sympathy with a political movement, the Collector can refuse to accept the resignation, remove him from office and forfeit the life interest of the officiator, if he is a representative Matadar or of the representative Matadar who nominated him as deputy, Paragraph 2 of section 31 of the Matadars Act, 1887, provides inter alia that if upon summary inquiry fraud or wilful framing of incorrect records or other grave misconduct or offence is proved against an officiator, the Collector may, with the previous sanction of Government, remove him from office; and paragraph 4 of this section further provides that if any representative Matadar or deputy is removed from office under this section, the Provincial Government may direct the forfeiture of the life interest in the mata of the representative Matadar so removed from office or of th representative Matadar by whom the deputy so removed from office was appointed, as the case may be. It is thus clear that in the case under reference the penalty under paragraph 4 of section 31 can be imposed if the officiating Matadar is guilty of grave misconduct.

2. Matadars who officiate as Revenue and Police Patels are Government servants (See R.L.A's opinion No. 3128 dated 6.4.38). Rule 30(1) of the Bombay Civil Services Conduct, Discipline and Appeal Rules has been made applicable to Revenue and Police Patels under section 240(2)(b) of the Government of India Act, 1935, and is not inconsistent with the provisions of the Matadars Act , 1887. It provides that no Government servant shall takepart in, subscribe to or assist in any way any political movement in India. A wilful breach of this rule would, it seems, amount to grave misconduct within the meaning of section 31 of the Matadars Act . (See R.L.A's opinion No. 9484 dated 24.10.40). This view of the case is fortified by the recent confidential Circular Memorandum No. 6303/34 issued by Government on 19th September 1942 directing that the resignation of a Government servant, tendered for political reasons, should not be accepted and that if the Government servant after tendering his resignation absents himself from duty, he should be dismissed with consequential loss of pension and forfeiture of Government contri-

bution, if any, to his provident Fund.

3. Much however, would depend on the character of the political movement and the circumstances of the case. If the movement has been declared illegal or is engaged in illegal activities then an expression of sympathy by an overt act of resignation would be tantamount to ~~grave~~ misconduct on the part of the Government servant. In times of crisis his resignation, even if it be not intended to embarrass the Government, might yet be so likely to do so that in the circumstances that result must be deemed to be present in the Government servant's mind. It may be that he was moved by no mean motive but by his notion of partiotism or by the call of political leaders. Yet that need not necessarily prevent the resignation being regarded by Government as coming within the scope of grave misconduct. It is the duty of Government to insist on its servants giving their first loyalty to itself. Those who in times of stress refuse to do so run the risk of being regarded by Government as guilty of grave misconduct. It might be argued that if a Government servant finds himself out of tune with Government policy and sympathises with the political movement, the only honourable course in the circumstances would be resignation. This argument can be controverted by contending that the Government servant cannot ignore the fact that in time of crisis when there is a greater call upon his loyalty Government is likely to be seriously embarrassed, and the political movement aided, by his resignation, These Government servants who in time of crisis have a sudden access of political conviction and change their loyalties overnight cannot expect any Government to estimate the gravity of misconduct other than by the needs and expediencies of governing.

4. Unless the officiating Matadar expressly indicates that he is resigning out of sympathy with a particular political movement it might be difficult to bring home the charge of grave misconduct. It cannot , for instance, be at once concluded that all officiators who resign at the present time do so out of sympathy with the present movement. A few may be coerced into resignation. Some may find the work so unpleasant in the present circumstances that they would rather resign although they have no desire to embarrass Government or to support the movement. By resigning they may be guilty of misconduct

S.A.K.
30-4

but not of grave misconduct. Others may resign for private reasons not connected with the present movement. Much therefore would depend on the reasons for resignation which the officiator may himself give .

5. There remains the question whether under the Matadars Act the Collector has power to refuse to accept the resignation of an officiator . It would seem,that he has such right. No. section of the Matadars Act explicitly gives to the Collector the power of refusal or to the officiator the absolute right of resignation. But section 20(b) seems to envisage that in the case of an officiating representative Matadar it is possible to the Collector to refuse to accept his resignation and it would be unreasonable to hold otherwise.

Sd/- P.N.Moos.
19-11

Remembrancer of Legal Affairs.

U.R. to R.D.No. 9355, dated the 20th November 1942.

S.A K.
30-4